

MINUTES
SENATE STATE AFFAIRS COMMITTEE

DATE: Monday, March 06, 2017

TIME: 8:00 A.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Siddoway, Vice Chairman Hagedorn, Senators Davis, Winder, Lodge, Lakey, Stennett, and Buckner-Webb

ABSENT/ EXCUSED: Senator Hill, serving as acting Governor

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Siddoway** called the Senate State Affairs Committee (Committee) meeting to order at 8:00 a.m.

H 152 **Relating to Unclaimed Property to establish an exemption for nonprofit corporations providing telecommunications service and delivery of electric power.**

Cozette Haley, Administrator of Unclaimed Property, State Treasurer's Office (STO), introduced herself to the Committee. **H 152** amends Idaho Code (I.C.) § 14-542 to specify rural telecommunication and electric service cooperatives may obtain an exemption for unclaimed capital credits. The bill would allow companies to provide the names of holders of unclaimed capital credits to the STO to conduct its customary unclaimed property outreach, rather than requiring the non-profit cooperatives to conduct the outreach.

Senator Davis referred to page 1, line 14 where the word "solely" is used and asked if it means the exemption is limited to the language in that section. **Ms. Haley** answered yes, the reference to "solely" means the exemption would apply only to capital credit money, not vendor payments, accounts payable, or any other type of money that becomes unclaimed property under Title 5, Chapter 14 of Idaho Code.

Vice Chairman Hagedorn referred to page 1, line 25 and asked why the language "the county assumes responsibilities of the administrator" is stricken. **Ms. Haley** responded the cooperatives currently must act as the administrator, and the law requires the cooperatives to publish newspaper advertising of unclaimed property notices, and maintain an unclaimed property website. The law change would relieve the cooperatives from these duties of the administrator. The STO will receive those names and include them in the STO's outreach. More people will have the opportunity to get their money back.

Will Hart, Executive Director and lobbyist for the Idaho Consumer-Owned Utilities Association (ICUA). **Mr. Hart** introduced his son, Harrison Hart, who was in the audience. **Mr. Hart** stated ICUA represents 11 rural electric cooperatives across the State, distributing electric power to more than 100,000 members on a not-for-profit basis. ICUA has been working with the STO over the last year to draft **H 152**, and it is an example of government working with people to alleviate a burden on the industry, create additional transparency, and allow a much more successful platform to reach citizens who have unclaimed funds.

Mr. Hart informed the Committee the bill affects only capital credits, which are amounts members pay in excess of funds used for the services. All cooperative members have a capital account, and the utilities pay out capital credits as a bill credit or by check. When members move out of state and can't be reached, it is currently the cooperative's obligation to try to track them down to return the funds. The cooperatives have had some success, but the STO website is more helpful in reaching people. ICUA has asked that the cooperatives be included under the current exemption for counties to allow the STO to act as administrator. The cooperative will maintain the funds.

Chairman Siddoway asked if the STO will invest the funds until a claim comes in. **Mr. Hart** replied the cooperatives will keep control of the funds but will take advantage of the STO's unclaimed property outreach by providing names, addresses, and amounts to the STO. **Chairman Siddoway** inquired how the unclaimed funds are invested or otherwise handled. **Mr. Hart** responded the cooperatives are required to maintain a fund equal to 25 percent of the accumulated unclaimed property, or \$20,000. The amount of unclaimed property depends on the size of the utility. The money is maintained in various investments and is sometimes used in regular general funding of the cooperative or scholarships for local students.

Senator Davis asked to whom the funds escheat if they are not claimed. **Mr. Hart** said the funds are maintained by the cooperatives in perpetuity and do not escheat. **Senator Davis** commented the bill would allow the cooperatives to take advantage of an active website where people check for funds and find money. **Mr. Hart** said that is correct. **Senator Davis** added it relieves the cooperatives of the duty to try to find and notify the property owners. **Mr. Hart** answered generally yes, but the cooperatives will continue to maintain their own websites as well.

MOTION:

Vice Chairman Hagedorn moved to send **H 152** to the floor with a **do pass** recommendation. **Senator Buckner-Webb** seconded the motion. The motion carried by **voice vote**.

H 181

Relating to the Local Government Investment Pool to authorize public charter school participation.

Edelene Ohman, Director of Investments at the STO, explained **H 181** amends I.C. § 67-1226 to specify that public charter schools are considered public agencies authorized to invest with the Local Government Investment Pool (LGIP). **Ms. Ohman** stated the LGIP provides a low-cost, highly diversified, liquid investment vehicle for those agencies with funds not immediately needed for operating costs. Currently, there are 18 charter schools with money invested with the LGIP, totaling roughly \$17 million, or just under two percent of the LGIP balance of \$1.9 billion. Although public charter schools receive State money, they are formed as non-profit corporations and do not fit neatly into the currently defined public agencies such as: municipalities; districts; political subdivisions; and/or political or public corporations. There is no fiscal impact, nor is the bill intended to make a political statement; the bill codifies existing practice.

Senator Winder asked if all the STO bills on the agenda have been reviewed by the advisory board. **Ms. Ohman** answered the two bills specifically related to investments have been reviewed by the advisory board, and there were no issues identified. Neither bill changes current operations but simply bring the law into harmony with current practices.

MOTION:

Senator Winder commented the bill is a good clarification and moved to send **H 181** to the floor with a **do pass** recommendation. **Senator Buckner-Webb** seconded the motion. The motion carried by **voice vote**.

H 182

Relating to Duties of the State Treasurer to provide that each fund invested by the office of the State Treasurer shall be charged an investment administration fee.

Ms. Ohman stated the bill amends I.C. § 67-1210 to clarify that all State funds invested by the Treasurer will be charged an administration fee. **Ms. Ohman** explained the Investment Division does not receive General Fund monies to manage State funds. The operating budget is a professional services appropriation that is approved by the Legislature on an annual basis, and the administration fee is annually approved by the Board of Examiners.

Ms. Ohman advised the bill provides that all idle funds invested by the STO will be charged an administration fee regardless of whether or not the fund keeps the income or it goes back to the General Fund. The bill also specifies an administration fee will be charged without regard to investment performance.

Senator Stennett asked about the reference to "one-twelfth" and how the number was derived. **Ms. Ohman** answered the one-twelfth relates to the frequency of the administration fee. The fee is calculated as a percentage on an annual basis based on the total costs to run the pool and the previous year's average daily fund balances. This year it is .052 percent, and the resulting amount is divided by 12 to arrive at a monthly fee to be charged.

Senator Winder referred to the top of page 3, line 2, and asked if the Treasurer will determine an amount or recommendation and the recommended monthly amount will go to the Board of Examiners for approval. **Ms. Ohman** stated the clarification is there is no difference between whether or not a fund keeps its interest or the interest goes to the General Fund. In addition, in the unlikely event of a negative return, there would still be an administration fee charged to manage the fund. The change codifies existing practices of the STO.

MOTION:

Senator Winder commented this seems a reasonable way to manage the fee and the fund, and he moved to send **H 182** to the floor with a **do pass** recommendation. **Senator Stennett** seconded the motion. The motion carried by **voice vote**.

H 183

Relating to the State Treasurer to revise duties of the State Treasurer to modernize language and reflect current practices.

Megan Gregory, Administrative Project Assistant, STO, stated the purpose of **H 183** is to modernize the language in I.C. § 67-1201 relating to the duties of the Treasurer to reflect current practices.

Ms. Gregory reviewed the changes in the bill, starting with page 2, line 12 regarding document retention. The word "certificate" would change to "records" to reflect current terminology. Also, a reference to I.C. § 9-330 would be removed as that section of Idaho Code has been repealed. On line 17, regarding receipts for deposit, the language is updated to reflect current terminology and practices. Receipts are created by various sources, and receipts are numbered uniquely but not sequentially. Receipt reporting includes the amount, date of deposit, and the unique STO receipt number.

Ms. Gregory further explained lines 28 to 30 are recommended grammatical changes. Line 33 is an update to reflect that the STO does not identify the purpose of any type of payment, including payment types other than warrants, made to the State Controller's Office and cannot report which payments were specifically for the redemption of bonds. Line 41 deletes a reference for reporting to the Governor at a time prescribed in Idaho Code, because there is no time prescribed in Idaho Code. The change will allow the Governor to request a report of balances in the Treasury as needed.

On page 2, line 3, the requirement to authenticate documents with the Treasurer's official seal would be changed to allow the optional use of the seal. Many writings and papers are now provided in an electronic format, and the embossed seal is not used.

MOTION:

Senator Buckner-Webb moved to send **H 183** to the floor with a **do pass** recommendation. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

H 184

Relating to the State Treasurer to provide authority to administer programs associated with the receipt and payment of moneys and add language regarding payment methods.

Ms. Gregory was recognized to present **H 184**, which amends I.C. § 67-1201 to modernize language regarding payments of State expenses and to authorize the Treasurer to administer Statewide programs related to the receipt and payment of funds. The bill also creates I.C. § 67-1229, which provides for interagency billing for the cost of services provided by the Treasurer.

Ms. Gregory advised the duties of the STO include receiving and keeping all monies belonging to the State. The Treasurer maintains banking relationships to provide general banking services to State agencies for the deposit of State monies and payment of warrants drawn by the State Controller. **H 184** was drafted primarily to address the Payment Card Industry Data Security Standards (PCI DSS) compliance program required by all credit card brands such as VISA and MasterCard. The State of Idaho is now classified as a Level II merchant by the credit card industry. Previously, the State was considered a Level III merchant and there was no requirement for a certified verification of compliance.

Ms. Gregory stated to comply with PCI DSS requirements, agencies that accept credit cards under the Treasurer's merchant bank card service agreement must have a quarterly network scan done by a PCI DSS-approved scanning vendor as well as an annual PCI DSS audit and report on compliance completed by a qualified security assessor. Because the STO maintains the merchant bank card services agreement, the project will be centralized through the STO. Through responses received to a Request for Information, the Treasurer estimates the expense to create and administer the PCI DSS compliance program will be \$40,000 per agency. Currently, there are approximately 20 agencies accepting credit cards using the Treasurer's merchant services agreement. Because of the added compliance expense, the STO anticipates agencies with a significant number of transactions and dollar volume will move forward with the PCI DSS requirements, while agencies with a small number of transactions and revenue from credit card sales will look for more cost-effective alternatives.

Ms. Gregory explained, based on information received so far the STO estimates the project cost as \$120,000 for FY 2018 for the Idaho Transportation Department, Liquor Division, and Idaho Fish and Game. All participating agencies are dedicated fund agencies so there will be no fiscal impact to the General Fund. Participating agencies have contacted their respective Division of Financial Management analysts to determine if a trailer bill will be needed to provide funding for the agency. Participating agencies would pay the STO, and the vendor selected through a Request for Proposals would be paid directly by the Treasurer.

Ms. Gregory informed the Committee **H 184** provides specific authority for the Treasurer to conduct the payment card industry program as well as any future similar programs related to receipt and payment of funds. PCI DSS compliance verification must be completed annually, and ongoing funding will be required. There is an additional potential fiscal impact if an agency needs information

technology resources to become compliant with the standards. The bill also modernizes the Treasurer's duties to include making payments by electronic payment methods in addition to warrants.

Ms. Gregory said the bill also contains a new I.C. § 67-1229 modeled on the authority granted by the Department of Administration in I.C. § 67-5704 to allow interagency billing and payments. The new section allows the Treasurer to bill and receive payment for services related to receipt and payment of funds, such as the PCI DSS compliance project, which are currently billed through the Statewide Cost Allocation Plan.

Senator Davis stated he does not understand the last sentence of subsection 4 on page 1, line 31. **Ms. Gregory** explained the additional language is related to the PCI DSS compliance project to allow the STO to bill the agencies and administer this type of program if a new project comes forward in future. **Senator Davis** said he does not feel comfortable with the concept, and he does not feel comfortable supporting the bill if he does not understand what programs are referred to in the phrase, "if deemed necessary, the Treasurer may administer programs associated." **Ms. Gregory** answered in this case, it is the PCI DSS compliance program. The goal was to make the legislation broader to include statutory authority for more than one specific program if a similar issue arises in the future.

Vice Chairman Hagedorn inquired how the bill relates to the credit card fees charged by some State agencies for using a credit card. **Ms. Gregory** responded the credit card fees charged to a customer arise when using a third-party vendor like Access Idaho to conduct online transactions. This bill pertains to use of a physical card-swiping machine. There is currently no fee charged for those transactions, and the State must become compliant to be able to keep using the swiping machines. If the State is not compliant, it faces a \$5,000 per month fine or the prospect of not being able to use the machines at all.

Chairman Siddoway asked who imposes the fines. **Ms. Gregory** replied the fine is passed down from VISA through the financial institution.

MOTION:

Vice Chairman Hagedorn moved to send **H 184** to the floor with a **do pass** recommendation. **Senator Lodge** seconded the motion.

Senator Davis stated he will vote against the motion, but perhaps he will become more comfortable and vote for it on the floor. Page 1, line 12 of the bill discusses the duties of the Treasurer, and the fourth duty is to pay amounts drawn by the State Controller by "generally available commercial payment methods, including warrants, electronic payments, and wire transfers." This suggests if there is a change in technology approach in the future, it will be covered, and he does not see the purpose of the last sentence of subsection 4.

Vice Chairman Hagedorn commented as things evolve with electronic payments and wire transfers and general use of credit cards, he understands the bill to say the Treasurer can negotiate contracts for newly evolving programs with different credit card companies as the Treasurer deems necessary. A law change would be needed every time a credit card company decides to change the methodology for transfers of payments, and that is why that sentence is appropriate.

Senator Davis said if that is what the bill said, he would support the motion. It could also be construed to mean if you use this commercial payment program, the Treasurer can develop a program to give free toasters. He wants to give the Treasurer the proper authority, but he can't vote for the bill in its current form because the language is too broad.

Chairman Siddoway called for a roll call vote. **Vice Chairman Hagedorn, Senators Winder and Lodge, and Chairman Siddoway** voted aye. **Senators Davis, Lakey, Stennett, and Buckner-Webb** voted nay. The motion failed with a 4-4 vote.

MOTION: **Senator Davis** moved to send **H 184** to the floor with a recommendation it be sent to the Fourteenth Order for possible amendment. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

RS 25456 **A Senate Joint Resolution proposing an amendment to the State Constitution relating to the rights of crime victims.**

Senator Lakey, District 12, stated the proposed resolution is an update to a prior victims rights resolution. It represents a different approach after discussions with various stakeholders to define criminal justice proceedings, tie the definition of restitution to economic losses, and revise the types and numbers of proceedings that require notice and opportunity to be heard.

Senator Winder moved to send **RS 25456** to print. **Senator Buckner-Webb** seconded the motion. The motion carried by **voice vote**.

S 1119 **Relating to Public Records to provide that certain records of the State Public Defense Commission shall be exempt from disclosure.**

Senator Winder, District 20, stated he is a member of the Public Defense Commission (Commission), and **S 1119** was drafted to address some issues encountered by the Commission. He yielded to Kimberly Simmons to present the bill.

Kimberly Simmons, Executive Director of the Commission, stated the bill would make certain records of the Commission exempt from public disclosure by amending I.C. § 74-105.

Ms. Simmons provided background on the Commission, which was created in 2014 after the National Legal Aid and Defender Association studied Idaho's public defense system and deemed it deficient. The Commission's mission is to help the counties improve trial level delivery of indigent defense services and to make recommendations to the Legislature so the system will be constitutionally sound. The Commission is statutorily required to provide training for defending attorneys as well as establish annual training requirements.

Ms. Simmons explained each county runs its own public defense system, and in the past there was no consistency. The Commission has worked to obtain consistent case load numbers by creating a definition of a "case" for all counties to use in order to make recommendations to the Legislature based on data collected. Because 32 of 44 counties provide services through contracts with attorneys, the Commission helps counties with core requirements to develop good contracts for a defending attorney. The Commission is creating standards for defense attorneys and provision of indigent defense services. Some standards are completed and awaiting final legislative approval, and many more will be created in future, including rules regarding oversight, enforcement, implementation, and modification of those standards.

Ms. Simmons informed the Committee when the Commission began its work, flat fee contracts for attorney services were discontinued, which increased indigent defense budgets. The new standards and requirements create additional costs, and the Legislature appropriated funds to distribute to the counties through indigent defense grants. In 2016, the Commission distributed approximately \$3.9 million to counties to improve indigent defense services.

Ms. Simmons said the Commission has authority to fund extraordinary litigation costs for counties and is defining "extraordinary litigation" as a case that would exceed a county's indigent defense budget. It has been difficult to create a definition that works for all counties because what is extraordinary in one county may be more routine in another. For example, Clark County has a population of 1,000 and doesn't typically have murder or complex drug conspiracy cases. It would be hard for a county that size to fund both prosecution and defense services for a murder case but much easier for a larger county. The Commission could develop a mechanism similar to the capital crimes defense fund for capital cases. Defending attorneys could apply to the Commission for appropriated funds to help pay for expert witnesses, investigation costs, evidence testing, and other costs the county may be unable to afford. The applications would include confidential case information that, if disclosed, could hurt a defendant's constitutional right to a fair and impartial jury trial.

Ms. Simmons advised if the Commission didn't exist, a defending attorney would make an ex parte motion to the court that only a judge would see. The motion would be protected under court rule and considered a privileged communication. However, a funding application to the Commission would not be exempt from disclosure under the court rules. **S 1119** would protect a defense attorney's application for funding and any related documents from disclosure. Anything already protected under court rule or attorney privilege would be included in the exemption. However, the amount of the award would be public because the Legislature needs the data in order to assess what the counties are spending on public defense.

Senator Davis stated he likes the policy and verbiage of the bill. He understands the documents will not be subject to a public records request and the court rules will provide protection, but he sees a small gap unless the court rules acknowledge the existence of the statute and provide there is a limited purpose of disclosure for obtaining extraordinary funding. **Ms. Simmons** asked for confirmation that Senator Davis has no issue with exempting the records, but the language may not be providing enough protection in some instances. **Senator Davis** asked if the application, although not subject to a public records request, would make it discoverable in a civil action. Disclosing previously privileged information outside a court setting might make the information subject to a request for production of documents under the rules of civil procedure. **Ms. Simmons** said she is trying to think of a case where a civil case might be attached to a criminal case. **Senator Davis** gave an example of an ongoing criminal matter when the victim files a civil lawsuit in parallel with the criminal action. If the victim makes a production request under the rules of civil procedure, an argument could be made that counsel made a waiver of otherwise privileged information by disclosing it to somebody not also protected by the court's rules. He asked if the court's rule should extend the privilege to whatever disclosures are made for the limited purpose of obtaining the funding. **Ms. Simmons** replied she is not as familiar with civil discovery rules, and if there is a gap it should be fixed. The Commission includes the State Appellate Public Defender and Justice Trout, and that issue was not foreseen when the language was drafted. If an issue, she agrees it should be fixed. **Senator Davis** commented the Commission has good advisors. He asked Ms. Simmons to consult with the Commission's members about his question, and he will be content if those advisors feel the language of the court rules provide enough protection.

Senator Lakey said he supports the language and appreciates Ms. Simmons's work. He commented it is important to listen to the counties when developing standards and rules to ensure they are pertinent to Idaho and not simply using standards of the American Bar Association.

Vice Chairman Hagedorn asked where he can find the definition of extraordinary litigation. **Ms. Simmons** replied it is in the policy and procedure section on the Commission's website. **Senator Davis** asked if the definition is included in the administrative rules. **Ms. Simmons** answered it is not in the rules. The statute allows the Commission to create policies and procedures. To get the funds delivered promptly, the Commission created the definition in policy and procedure but the definition can be included in rule in the future.

Senator Winder mentioned the Commission did not establish standards for case loads for public defenders at the request of the counties. The Commission needs time to conduct a Statewide survey to gather public defense data and use that information to determine future standards. By this time next year, the standards should be in place, and the Commission will be ready to make recommendations to Legislature.

MOTION: **Senator Davis** moved to send **S 1119** to the floor with a **do pass** recommendation. **Senator Lodge** seconded the motion. The motion carried by **voice vote**.

APPROVAL OF MINUTES: **Senator Winder** moved to approve the Minutes of the February 1, 2017 meeting. **Senator Lakey** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business at this time, **Chairman Siddoway** adjourned the meeting at 9:05 a.m.

Senator Siddoway
Chair

Twyla Melton, Secretary

Jeanne Jackson-Heim, Secretary